

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENVIRONMENTAL ANALYSIS – MS27

1120 N STREET

P.O. BOX 942874

SACRAMENTO, CA 94274-0001



Pursuant to the 1994 Permanent Injunction in place in Los Angeles, the Department of Transportation (Department) has been engaged in a study of treatment BMPs entitled The BMP Retrofit Pilot Program (study). The Department, and the Natural Resources Defense Council (NRDC) agreed to “design and conduct the study without pre-judgment about outcome.” In June 2002, the NRDC filed a motion against the Department alleging the Department had “prejudged” the outcome of the study. In its motion the NRDC demanded:

1. A retraction of 17 reports, including the Study, and an acknowledgement that the Department pre-judged the Study in violation of the agreement.
2. An order that the Department instruct consultants and staff not to publish, or give presentations about the Study.
3. An order that the Department adopt all of NRDC’s edits or provide a reasoned explanation, supported by substantial evidence, why any edit should not be adopted.
4. An order that the Department submit for NRDC review and approval a retrofit plan.

The Department denied the allegations, and opposed the motion. The parties settled. The settlement requires:

1. Distribution of a statement clarifying the work on the Study (Attachment A below).
2. A more detailed dispute resolution process than the process previously in place.

The Department will continue to work cooperatively in completing the Study. The Department values the support and assistance of our partners, the staff and research teams at the University of California, California State University, and numerous engineering consultants. The Department will continue to improve mobility across California while retaining our commitment to environmental stewardship.

Attachment

EXHIBIT A

1. The parties have signed a stipulation agreeing to cooperatively design and conduct the Retrofit Study without prejudgment about outcome.
2. The Retrofit Study has been on-going since 1998 and several different BMP's have been installed and tested in a variety of settings in Caltrans' stormwater system.
3. Work associated with the Retrofit Study is on-going, and a report regarding the Study is being drafted by the parties.
4. While the Retrofit Study was on-going, several parties who contracted with Caltrans to work on the studies have made public statements, made presentations at conferences and seminars, and have distributed papers and other written materials regarding the Study.
5. In addition, Caltrans has published certain reports regarding stormwater BMP's and their costs.
6. These presentations, papers and reports have been distributed publicly to numerous groups and individuals.
7. Conclusions about the outcome of the Retrofit Study are premature. Such conclusions are still the subject of ongoing analysis and discussions between the parties. Final conclusions will be made available after preparation of a final report regarding the Retrofit Study.
8. Analysis and conclusions about how the BMP's in the Retrofit Study can or should be utilized by Caltrans are not final.
9. At the appropriate time, after cooperation between the parties regarding final reporting of the Retrofit Study, Caltrans, NRDC and Santa Monica BayKeeper will distribute the full analysis and conclusions of the Study.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NATURAL RESOURCES DEFENSE COUNCIL,)	Case No. 93-6073-ER (JRX)
SANTA MONICA BAYKEEPER, TERRY)	
TAMMINEN,)	
Plaintiffs,)	
vs.)	STIPULATION AND [PROPOSED] ORDER
)	RESOLVING MOTION TO COMPEL
CALIFORNIA DEPARTMENT OF)	COMPLIANCE WITH RETROFIT STUDY
TRANSPORTATION; JAMES W. VAN LOBEN)	ORDER
SELS,)	
Defendants.)	

WHEREAS, this Court issued a Permanent Injunction in this matter on December 14, 1994;

WHEREAS, pursuant to the injunction, Defendant is required to comply with the federal Clean
Water Act, applicable NPDES permit and stormwater management plan;

1 WHEREAS, on January 26, 1998, this Court entered the Stipulation and Order Re Agreement to
2 Conduct Retrofit Pilot Studies (the “Retrofit Study”);

3 WHEREAS, Defendant has embarked upon a retrofit pilot program pursuant to the stipulation;

4 WHEREAS, certain parties working for Defendant have made public statements and
5 presentations regarding the Retrofit Study and the various treatment devices studied therein (the
6 “Statements”);

7 WHEREAS, on May 29, 2002, Plaintiffs filed a motion to compel compliance with the Retrofit
8 Study Order, alleging, in relevant part, that Defendant had prejudged the outcome of the Retrofit Study;

9 WHEREAS, Plaintiffs believe that resolution of the Retrofit Study may necessitate changes to
10 those portions of Defendant’s stormwater management plan that address stormwater treatment
11 technologies;

12 WHEREAS, Defendants believe that the stormwater management plan is essentially an
13 implementation plan for its stormwater permit and any changes to the stormwater management plan will
14 only be made in the normal course of the permit renewal process.

15 WHEREAS, the parties desire to resolve Plaintiffs’ motion without further litigation, and neither
16 party admits the allegations of the other party;

17 WHEREFORE, the parties hereby stipulate as follows:

18 I. The parties have developed a Joint Statement and Clarification, which is attached hereto as
19 Exhibit A.

20 II. The Joint Statement and Clarification shall be distributed within one month of the entry of this
21 Order in the following manner:

22 A. To following employees, consultants and other persons working for Defendant via
23 electronic mail: Headquarters Stormwater Program staff; Members of the Water Quality
24 Storm Water Advisory Team, including district NPDES coordinators and representatives
25 of all functional areas involved in stormwater; and members of the Retrofit Pilot Study
26 Team, including all consultants and university staff working on that team.

27 B. Defendant shall inquire of the conference organizers for the conferences listed in Exhibit
28 A to the memorandum of points and authorities in support of Plaintiffs’ motion.

1 Defendant shall seek to obtain mailing lists of all participants to those conferences. To
2 the extent any lists are obtained, Defendant shall mail the Joint Statement and
3 Clarification to each and every such participant.

4 C. Defendant shall send a letter to the editor of Stormwater magazine requesting that it
5 publish the Joint Statement and Clarification.

6 III. The parties have devised a revised dispute resolution process set forth below, which shall replace
7 the process filed with this Court on or about September 30, 1997:

8 A. Whenever an issue concerning the Retrofit Study arises, a party may initiate the dispute
9 resolution process which shall consist of three levels and shall follow the procedures set
10 forth herein. Each level shall consist of persons representing each party who shall
11 discuss issues that are identified and submitted for dispute resolution. The persons who
12 shall serve at each level are specifically identified in paragraphs III.A.a. and b below.
13 Substitutions should not be made without prior notification to the other party. No
14 persons will be permitted to participate in both the first and second levels of this dispute
15 resolution process. Issues shall be submitted first to the Technical Team and if they are
16 unable to resolve the issue, then to the Policy Team and if they are unable to resolve the
17 issue, then to non-binding mediation.

18 a. "Technical Team - First Level": The Technical Team shall consist of Plaintiffs'
19 experts Drs. Richard Horner and Christopher May and Defendant's experts Dr.
20 Michael Barrett, Scott Taylor and Brian Currier as well as Defendant's employees,
21 Bill Reagan Deputy District Director for Design in District 7 and Mike Flake, Chief
22 of Stormwater, Headquarters.

23 b. "Policy Team - Second Level": The Policy Team shall consist of Steve Fleischli,
24 Santa Monica BayKeeper Executive Director and David Beckman, Natural Resources
25 Defense Council Senior Attorney. Defendant shall be represented by William Evans,
26 Defendant's legal counsel and Mark Rayback, Chief of Environmental Engineering,
27 Headquarters.
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- 1 B. Whenever an issue concerning the Retrofit Study arises, the dispute resolution process
2 shall be initiated when the party identifying an issue notifies the other party in writing (by
3 letter or e-mail). Plaintiffs shall transmit the notification to both William Evans, and
4 Mark Rayback. Defendants shall transmit the notification to both Steve Fleischli and
5 David Beckman.
- 6 C. The Technical Team shall have thirty (30) days from the date the notification is
7 transmitted to either resolve the matter or note their disagreements. In either case, the
8 Technical Team shall provide the Policy Team with a written recommendation regarding
9 their discussions and conclusions. The Technical Team can seek a single extension of
10 fifteen (15) days, provided they receive concurrence from the Policy Team. However, if
11 either party indicates that an issue cannot be resolved at the Technical Team level, it shall
12 proceed immediately to the Policy Team level.
- 13 D. The Policy Team shall have thirty (30) days from the date they receive the written
14 recommendation from the Technical Team to either resolve the matter or note their
15 disagreements. In either case, the Policy Team shall develop a written recommendation
16 regarding their discussions and conclusions. The Policy Team can seek to extend the
17 time period by an additional fifteen (15) days, provided the parties agree.
- 18 E. If the Policy Team cannot reach resolution, a mediator shall be invited to join the Policy
19 Team in order to discuss the issue and attempt to reach resolution. In order to expedite
20 the process for finding an acceptable mediator the parties shall provide each other with a
21 list of five persons they believe would be acceptable to serve as a mediator by September
22 23, 2002. The parties shall work promptly from there to choose a mediator acceptable to
23 all parties. This mediation session shall extend thirty (30) days during which time the
24 parties shall either resolve the matter or note their disagreements. In either case, the
25 members involved in the mediation shall provide the parties with a written
26 recommendation regarding their discussions and conclusions. The members of the
27 mediation session can seek to extend the time period by an additional fifteen (15) days,
28 provided they receive concurrence from the parties.

F. The parties agree that there are several issues that should be submitted to the Technical Team. The parties shall notify each other as to any issues they wish to submit to the Technical Team in accord with the procedures set forth above.

IV. Plaintiffs' fees and costs associated with the Motion to Compel Compliance shall be handled in the ordinary course of business as other fees and costs, payable upon reasonable demand from Plaintiffs.

V. Plaintiffs' motion to compel compliance, as well as the two related motions (1) the motion to file an amicus brief, filed by the Regents of the University of California, and (2) the motion to intervene, filed by certain cities, all scheduled to be heard on October 7, 2002, shall be taken off calendar.

SO AGREED:

FOR PLAINTIFFS:

EVERETT L. DELANO III

Date

FOR DEFENDANT:

KATHRYN PAPALIA

Date

ORDER

GOOD CAUSE APPEARING, THE STIPULATION IS GRANTED. IT IS SO ORDERED:

Judge of the U.S. District Court

Date

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